

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-003-13-1-5-00148-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-482-034.000-003
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 30, 2015. On January 20, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on March 19, 2018. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn and testified. Robert Metz and Terrance Dourousseau, Lake County Appeal Officers, were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant residential lot located at 4822 W. 29th Avenue in Gary.
6. For 2013, the assessed value was \$2,200.
7. Petitioner requested an assessed value of \$900.

Record

8. The official record contains the following:
 - a. A digital recording of the hearing

b. Exhibits:

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| Petitioner Exhibit 1: | GIS map, |
| Petitioner Exhibit 2: | Property record card (“PRC”) for the subject, |
| Respondent Exhibit 1: | PRC for the subject, |
| Board Exhibit A: | Form 131 petition and attachments, |
| Board Exhibit B: | Notice of hearing, |
| Board Exhibit C: | Hearing sign-in sheet, |

c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value was \$2,200 for 2012 and 2013. Petitioner therefore has the burden of proof.

Summary of Parties' Contentions

14. Petitioner's case:

- a. Petitioner contends this property is adjacent to a property located at 4820 W. 29th Avenue that was also appealed. The parcels are similar in size and location. Petitioner purchased both parcels at a commissioners' sale for \$107 each. *Nowacki testimony; Pet'r Exs. 1 & 2.*
- b. Petitioner contends the only markets for properties in this area of Gary are the treasurer's sale and the commissioners' sale. He claims that this property has been churning through the system since 1994 and that it must have been through the treasurer's sales repeatedly or it would not have ultimately gone to the commissioners' sale. Petitioner contends that typically in this process, the owner walks away from the property, then it goes through several tax sales, and it finally ends up at the commissioners' sale. *Nowacki testimony; Pet'r Ex. 2.*
- c. Petitioner claims that Respondent, during a PTABOA hearing, stated that the market dictates the process. In other words, what someone pays for the property is the value. Petitioner purchased three lots in this subdivision, one for \$48 and two for \$107 each as mentioned previously. He suggests that if the market dictates the value, the subject property should be assessed at the purchase price or the average of the three purchase prices. *Nowacki testimony.*
- d. Petitioner contends the map shows there is no market interest in the area for residential subdivided lots. The value of these properties is in consolidating them. Petitioner claims to have purchased this property as a portion of some potential assemblage. *Nowacki testimony; Pet'r Ex. 1.*
- e. Petitioner contends a willing buyer and willing seller would come to an agreement at \$900 when negotiating this property. Consequently, Petitioner requests that the Board value it at \$900. *Nowacki testimony.*

15. Respondent's case:

- a. Respondent contends Petitioner has failed to present any market evidence to support his requested value of \$900 and that that value is based solely on his opinion. *Durouseau testimony.*
- b. Respondent contends Petitioner's statement that the property has bounced around for forty years and offered at the tax sale every three years with no one showing any interest in buying it is without support. *Metz testimony.*

ANALYSIS

16. Petitioner failed to make a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
 - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 assessment date was March 1, 2013. Ind. Code § 6-1.1-2-1.5.
 - c. Petitioner purchased the property for \$107. However, Petitioner did not request the property be assessed for the purchase price. Petitioner contends the property should be assessed at \$900. Petitioner presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Petitioner failed to make a prima facie case for reducing the subject property’s assessment. Where a petitioner has not supported its claim with probative evidence, the respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

17. Petitioner failed to establish a prima facie case that the assessed value was incorrect. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the assessed value should not be changed.

ISSUED: June 13, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.